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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1940

No. 804

HARRISON PARKER,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR REVIEW ON WRIT OF CERTIORARI

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SUMMARY OF ARGUMENT.

PROPOSITIONS OF LAW and AUTHORITIES RELIED UPON.

I.

Inasmuch as the record discloses that no federal question was raised, considered or passed upon at any stage of the proceedings prior to the filing of the present petition, or is now involved, this Court is without jurisdiction to review the case on writ of certiorari.

People v. *Parker,* 374 Ill. 524.

Herndon v. *Georgia,* 295 U. S. 441, 443.

Hiawassee Power Co. v. *Carolina-Tennessee Power Co.*, 252 U. S. 341, 343.

Rooker v. *Fidelity Trust Co.*, 261 U. S. 114, 116.

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Rule 12, par. 1, and Rule 38, par. 2, of the Rules of the Supreme Court of the United States.

II.

The petitioner was properly found guilty and sentenced for obstructing justice and for contempt of court and was not deprived of due process of law, or of freedom of speech or of the press, or deprived of his right to petition the government for a redress of his supposed grievances.

Commonwealth v. *McNary*, 246 Mass. 55; 140 N. E. 255, 29 A. L. R. 483.

Illinois Revised Statutes, 1939,
Chapter 38, Secs. 711-721;
Chapter 78, Secs. 16-19;
Chapter 37, Sec. 409;
Chapter 38, Sec. 662.

Lindquist v. *Friedman's, Inc.*, 366 Ill. 232, 236.

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Duke v. *United States*, 60 Fed. (2nd) 840; 301 U. S. 492.

ARGUMENT.

I.

Inasmuch as the record discloses that no federal question was raised, considered or passed upon at any stage of the proceedings prior to the filing of the present petition, or is now involved, this Court is without jurisdiction to review the case on writ of certiorari.

The petition for certiorari filed herein should be denied because the record shows that petitioner did not at any time raise any federal questions prior to the filing of the petition with this court. Petitioner's answer in the trial court (Rec. 26-34) contains no reference whatsoever to the Constitution of the United States, any federal law, or any federal right thereunder. Petitioner's assignment of errors on appeal from the judgment of the trial court (Rec. 42) alleges no error based upon the determination of any federal question. The Supreme Court of the State of Illinois, 374 Ill. 524 (Rec. 44-48) made no mention of and did not pass upon any of the questions which petitioner seeks to have this court pass upon. The proceedings are in their entirety wholly devoid of any federal question.

It is well settled that this court does not have jurisdiction unless the federal questions raised in this petition have been asserted at the proper time, in the proper manner, and adjudicated by the State court.

Herndon v. *Georgia,* 295 U. S. 441 (1935), at page 443.

Hiawassee Power Co. v. *Carolina-Tennessee Power Company,* 252 U. S. 341 (1920), at page 343.

Rooker v. *Fidelity Trust Co.*, 261 U. S. 114 (1922), at page 116.

Godchaux Company, Inc. v. *Estopinal*, 251 U. S. 173 (1919).

Hartford Life Insurance Company v. *Johnson*, 249 U. S. 490 (1918), at page 492.

Atlantic Coast Line Railroad Co. v. *Mims*, 242 U. S. 532 (1917), at page 535.

Cleveland & Pittsburgh Railroad v. *City of Cleveland*, 235 U. S. 50 (1914), at page 53.

The petition should be denied for the further reason that it fails to set forth the statement disclosing the basis upon which petitioner contends this court has jurisdiction to review the judgment of which he complains, which statement is required by Rule 38, paragraph 2, and Rule 12, paragraph 1, of this court. The petition fails to specify the stage in the proceedings in the trial court or in the Supreme Court of the State of Illinois at which the federal questions sought to be reviewed were raised. It fails to specify the manner in which such questions were raised in said courts. It does not disclose the method by which they were raised or the way in which they were passed on by said courts. The petition contains no quotations of the record supporting any assertion that the rulings of said courts passed in any way upon such federal questions. Reference to the record referred to above discloses that it is impossible for petitioner to comply with the above-mentioned rules of this court because petitioners raised no federal questions.

II.

The petitioner was properly found guilty and sentenced for obstructing justice and contempt of court and was not deprived of due process of law, or of freedom of speech or of the press, or deprived of his right to petition the government for a redress of his supposed grievances.

There are different rules in different States regarding the functions of grand juries and the right of citizens to petition a grand jury with respect to crimes or with respect to appearing before it. In *Commonwealth* v. *McNary,* 246 Mass. 55, 140 N. E. 255, 29 A. L. R. 483, the court declined to express opinion whether a mere communication to the grand jury would constitute contempt, but held that the communication in the case under consideration was a contempt because it attempted to instruct the grand jurors as to their duties in usurpation of the functions of the court.

In Illinois the grand jury system is similar to that at common law, with certain modifications by usage and statute (Ill. Rev. Stat., 1939, Chap. 38, Secs. 711-721; Chap. 78, Secs. 16-19). Private citizens having knowledge of crimes may communicate such knowledge to the court or to the state's attorney for presentation to the grand jury; or they may swear out a warrant before an examining magistrate who, if probable cause is found, shall bind the accused over to the grand jury (Ill. Rev. Stat., 1939, Chap. 37, Sec. 409; *idem* Chap. 38, Sec. 662; *Linquist* v. *Friedmans, Inc.,* 366 Ill. 232, 236; *Guthmann* v. *People,* 203 Ill. 260; *People* v. *Wilson,* 356 Ill. 256; *People* v. *Blenz,* 239 Ill. App. 318, 320). The Illinois rule laid down in the instant case and in previous cases seems to forbid "personal solicitation" of the grand jury or of "some of its members to obtain or prevent the indictment of parties." (374 Ill. 524, 528.)

But whether or not the Illinois rule goes so far, it is plain that the communications in this case sent to the grand jurors at their homes (Rec. 8-9; Rec. 20-22) containing "vicious and inflammatory" matter which are "replete with malignant accusations against private citizens and public officials" and which are "in all probability the result of personal enmity" (374 Ill. 524, 525, 529), are obstructions of justice. In addition, these communications instruct the grand jurors what they shall do.

Whether "a stranger has the right voluntarily to bring facts to the knowledge of a grand jury" (374 Ill. 524, 528) is not here directly involved. No stranger has the right to solicit the grand jurors at their homes with vicious, inflammatory, malignant communications,—the efforts of personal spite and enmity.

The "actual obstruction" principle, the "clear and present danger" principle and the "tendency" principle are not involved in this case. It is clear that if grand jurors are to be subjected in their homes to such malignancies, irrelevancies, spite and personal hostility, the functions of grand juries in Illinois will be subverted. It is not a case of "tendency" or "clear and present danger" which this Court has under consideration in the *Times-Mirror-Bridges* cases now pending before it; rather it is a case of direct interference analogous to solicitation of a petit jury to find verdict for or against one of the parties. We submit that the State of Illinois may guard its machinery of justice by the process of contempt analogously to the protection afforded grand juries of the United States (*Duke* v. *United States,* 60 Fed. (2nd) 840; 301 U. S. 492).

The Supreme Court of Illinois pointed out (374 Ill. 524, 527) "The criminal court found Parker guilty of 'acts and conduct directly calculated to impede, embar-

rass and obstruct the court in the due administration of justice.'" In affirming, the Supreme Court again said at page 529: "Rather they [Parker's letters to the grand jury] exposed the grand jury to the danger of being misled and abused by one motivated by personal animosity. If such communications with the grand jury were permitted and had their desired effect, many innocent people would be indicted solely because of personal enmity or the malice of one seeking revenge."

CONCLUSION.

For the reasons above set forth, we respectfully pray that the Petition for a Writ of Certiorari be denied by this Honorable Court.

Respectfully submitted,

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